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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON – SEATTLE DIVISION

LISA KRISTIN STANISLAW,

Plaintiff,

vs.

USAA CASUALTY INSURANCE
COMPANY,

Defendant.

CASE NO.

[Formerly King County Superior Court
Case No. 18-2-20254-0 SEA]

**DEFENDANT USAA CASUALTY
INSURANCE COMPANY'S
NOTICE OF REMOVAL OF
STATE ACTION UNDER 28 U.S.C.
SECTION 1332 AND 1441(a)
[DIVERSITY JURISDICTION]**

DEMAND FOR JURY TRIAL

1 **TO THE CLERK OF THE COURT AND TO ALL PARTIES HEREIN:**

2 PLEASE TAKE NOTICE that Defendant USAA CASUALTY INSURANCE
3 COMPANY (“USAA CIC”) hereby removes in this Court the state action described
4 below:

- 5 1. USAA CIC is a defendant in the civil action commenced on August 16,
6 2018 in the Superior Court of the State of Washington, County of King,
7 Case No. 18-2-20254-0 SEA, entitled Lisa Stanislaw v. USAA Casualty
8 Insurance Company. A true and correct copy of the Summons and
9 Complaint is attached hereto as **Exhibit “1”** and is incorporated as part
10 of this Notice.
- 11 2. The Insurance Commissioner was served a copy of the Summons and
12 Complaint on August 16, 2018.
- 13 3. USAA CIC issued Lisa Stanislaw (“Plaintiff”) Washington automobile
14 policy number 01005 84 77C 7101 0, effective from April 25, 2014 to
15 September 21, 2014 (“the Policy”). A true, correct, and certified copy of
16 the Policy is attached hereto as **Exhibit “2”** and is incorporated as part
17 of this Notice.

18 **JURISDICTION**

19 A. **Removal Jurisdiction Based on Diversity Jurisdiction**

- 20 4. This action is a civil action over which this Court has original
21 jurisdiction under 28 U.S.C. section 1332 and is one that may be
22 removed to this Court by USAA CIC pursuant to the provisions of 28
23 U.S.C. section 1441(a), in that it is a civil action wherein the matter in
24 controversy exceeds the sum of \$75,000 exclusive of interest and costs,
25 and is between citizens of different states.
- 26 5. Pursuant to 28 U.S.C. section 1446(d), USAA CIC will also file with the
27 King County Superior Court a copy of this Notice of Removal.

1 **B. Complete Diversity of Citizenship Exists**

- 2 6. At the time of the commencement of this action, and at all times since,
3 USAA CIC has been, and still is, a corporation of the State of Texas,
4 being incorporated under the laws of Texas, and has had and continues
5 to have its principal place of business in Texas.
6 7. At the time of the commencement of this action, and at all times since,
7 Plaintiff Lisa Stanislaw has been and continues to be a citizen of the
8 State of Washington, having been a resident of King County within the
9 State of Washington. (Compl. ¶ 1.1.)
10 8. This action was brought in the State of Washington. USAA CIC, as a
11 corporate defendant, is not, at the time of the institution of this action,
12 and is not now, a corporation incorporated under the laws of the State of
13 Washington and does not have at the time of the institution of this
14 action, and does not have now, its principal place of business in
15 Washington. Therefore, USAA CIC is not a citizen of Washington.

16 C. **Minimum Amount in Controversy Exceeds \$75,000**

- 17 9. This is an insurance bad faith case. The fact that the amount in
18 controversy exceeds the minimum requirement for diversity jurisdiction
19 can be determined by the nature of the claims and the type of damages
20 sought in the Complaint. The Complaint seeks damages for breach of
21 contract, and damages for the violation of the Uniform Health Care Act.
22 a. **General and Special Damages**
23 10. USAA CIC issued Plaintiff a Washington automobile policy that
24 included underinsured motorist ("UIM") coverage limits of \$1,000,000
25 per accident subject to the various terms, conditions, definitions,
26 exclusions, and limitations as set forth within the Policy.
27 11. According to the Complaint, on August 5, 2014, Plaintiff Lisa Stanislaw
28 was travelling northbound on the Elliott Ave W highway in Seattle.

(Compl. ¶ 3.1-3.2.) Another vehicle travelling southward on that highway turned left across three lanes of the northbound direction highway and collided into her car. (*Id.*)

12. Plaintiff alleges she has demanded the full UIM policy limits of \$1,000,000. (Compl. ¶ 3.11.) Plaintiff alleges that her past medical bills exceed \$137,209. (*Id.*) Plaintiff alleges her total economic damages exceed \$2,000,000. (*Id.*)
13. Plaintiff alleges that Defendant USAA CIC has offered Plaintiff \$125,000 for settlement of her UIM claim to date. (Compl. ¶ 3.19.)
14. Defendant USAA CIC and Plaintiff disagree on the value of Plaintiff's UIM claim, which forms the basis of the instant Complaint. (Compl. ¶ 4.2.)
15. Plaintiff alleges that USAA CIC's settlement efforts fail to encompass Plaintiff's "medical expenses, future medical expenses, related past and future lost earning capacity, or her related pain and suffering directly caused by the subject motor vehicle collision." (Compl. ¶ 3.20.)

b. Applicable Policy Limits

16. The Policy included the following applicable underinsured motorist bodily injury limit, which states, in pertinent part:

PART C – UNDERINSURED MOTORISTS		
BODILY INJURY	EA PER	\$1,000,000
	EA ACC	\$1,000,000

(Ex. 2.)

17. Under the Policy, the UIM limits *alone* consist of \$1,000,000 per accident, well above the minimum amount in controversy requirement. The UIM Policy limits are being sought on the face of the Complaint, and it is apparent that Plaintiff's alleged damages exceed the \$75,000

1 minimum amount in controversy requirement. Thus, should Plaintiff
 2 demonstrate she is entitled to the UIM coverage limits, the value of
 3 Plaintiff's breach of contract damages alone easily satisfies the
 4 minimum amount in controversy requirement. Nonetheless, USAA CIC
 5 reserves its right to dispute any such claims relative to the existence,
 6 amount, and appropriateness of Plaintiff's claim for breach of contract
 7 damages.

8 c. **Attorney's Fees**

- 9 18. In addition, the Complaint asserts a claim "for reasonable attorneys fees
 10 and costs incurred herein" arising from Plaintiff's causes of action for
 11 breach of contract and violation of the Uniform Health Care Act.
 12 (Compl. ¶ 6.6.) An insured may recoup attorney fees that it incurs as a
 13 result of an insurer's refusal to pay a justified claim of the insured.
 14 (Olympic S.S. Co., Inc. v. Centennial Ins. Co., 117 Wash.2d 37, 52
 15 (1991).) Nonetheless, USAA CIC reserves its right to dispute any such
 16 claims relative to the existence, amount, and appropriateness of
 17 Plaintiff's claim for attorneys' fees as a damage element.
- 18 19. Accordingly, when the claim for attorneys' fees is considered together
 19 with Plaintiff's claim for general and special damages, the amount in
 20 controversy for the instant matter far exceeds the \$75,000 threshold.

21 **INTRADISTRICT ASSIGNMENT**

- 22 20. The United States District Court for the Western District of Washington,
 23 Seattle Division, embraces the District and Division in which the state
 24 court action was filed, and thus, said Court and Division are the proper
 25 venue for this action.

1 Dated: September 7, 2018 DKM LAW GROUP, LLP

2 By: _____
3

4 ROBERT S. McLAY
5 JOSHUA N. KASTAN
6 HARI KUMAR
7 Attorneys for Defendant
8 USAA CASUALTY INSURANCE
9 COMPANY

DEMAND FOR JURY TRIAL

10 Defendant USAA Casualty Insurance Company hereby demands trial by jury.
11

12 Dated: September 7, 2018 DKM LAW GROUP, LLP

13 By: _____
14

15 ROBERT S. McLAY
16 JOSHUA N. KASTAN
17 HARI KUMAR
18 Attorneys for Defendant
19 USAA CASUALTY INSURANCE
20 COMPANY